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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/788,776

02/27/2004

Thomas Wiegand

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6147

22862 7590 02/19/2009

GLENN PATENT GROUP
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EXAMINER

WEIDNER, TIMOTHY J

ART UNIT

PAPER NUMBER

2419

MAIL DATE

DELIVERY MODE

02/19/2009

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/788,776	Applicant(s) WIEGAND, THOMAS	
	Examiner Timothy J. Weidner	Art Unit 2419	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 January 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-11, 18-26, 28, 29 and 31-37 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 1-11, 18-24 and 32-37 is/are allowed.
- 6) ☒ Claim(s) 25, 26, 28, 29 and 31 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on January 15, 2009 has been entered.

Response to Amendment

Claims 1, 18-21, 24-26, 28, 29, and 31 are currently amended.

Claims 1-11, 18-26, 28, 29, and 31-37 are pending.

Response to Arguments

In response to Applicant's arguments/amendments filed January 15, 2009:

Applicant's arguments/amendments with respect to rejection of claims 29 and 31 under 35 USC 101 have been fully considered but they are not persuasive. The applicant's specification, page 41, line 1-3, still defines the claimed "computer readable medium" as including "data carrier" which is generally regarded as "signal." Signals do not fall into one of the four statutory categories of invention. Therefore, the rejection is maintained.

Applicant's arguments/amendments with respect to rejections under 35 USC 112, 2nd paragraph, have been fully considered and are persuasive. Therefore, the rejections have been withdrawn.

Specification

The abstract of the disclosure is objected to because the title should not be on the same page as the abstract. Correction is required. See MPEP § 608.01(b).

Claim Rejections - 35 USC § 101

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 25, 26, 28, 29, and 31 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

Claim(s) 25, 26, and 28 is/are rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory “process” under 35 U.S.C. 101 must (1) be tied to particular machine, or (2) transform underlying subject matter (such as an article or material) to a different state or thing. See page 10 of *In Re Bilski* 88 USPQ2d 1385. The instant claims are neither positively tied to a particular machine that accomplishes the claimed method steps nor transform underlying subject matter, and therefore do not qualify as a statutory process.

Regarding claims 29 and 31, the claim is directed to a computer readable medium including a data carrier as defined by the specification (page 41, lines 1-3), generally defined including electromagnetic carrier waves, which is a form of energy, and does not fall into one of the four statutory categories of invention, i.e. it is not a process, machine, manufacture, or composition of matter.

Allowable Subject Matter

Claims 1-11, 18-24, and 32-37 are allowed.

Claims 25, 26, 28, 29, and 31 would be allowable if rewritten or amended to overcome rejections under 35 USC 101.

The following is a statement of reasons for the indication of allowable subject matter: the prior art of record does not reasonably teach “detecting a border between successive access units by use of the predetermined order” or the like in combination with the other claim limitations specified by the independent claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Timothy J. Weidner whose telephone number is (571) 270-1825. The examiner can normally be reached on Monday - Friday, 8:00 AM - 5:00 PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Edan Orgad can be reached on (571) 272-7884. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 2419

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Timothy J Weidner/
Examiner, Art Unit 2419

/Edan Orgad/
Supervisory Patent Examiner, Art Unit 2419